

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., et al.,  
Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF CATELLUS OPERATING LIMITED PARTNERSHIP TO LIQUIDATING  
TRUSTEE'S THIRTY-NINTH OMNIBUS OBJECTION TO LANDLORD CLAIMS  
(REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)  
(Claim No. 7933)**

This response is filed by Catellus Operating Limited Partnership, a Delaware limited partnership ("Catellus"), to the Liquidating Trustee's Thirty-Ninth Objection to Landlord Claims (the "39<sup>th</sup> Objection"). In the 39<sup>th</sup> Objection, the Liquidating Trustee asserts that Catellus' Claim No. 7933 filed in the amount of \$1,903,434.65 (the "Proof of Claim") should be partially invalidated and reduced and allowed in the sum of \$122,329.55.<sup>1</sup>

The Liquidating Trustee's 39<sup>th</sup> Objection asserts that the amount claimed by Catellus as rejection damages in its Proof of Claim should be disallowed because Catellus has not met its burden to mitigate damages under applicable law.

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<sup>1</sup> This is the fourth objection filed by the Liquidating Trustee to Catellus' Proof of Claim No. 7933. The first objection (9<sup>th</sup> omnibus-duplicate) filed on June 4, 2009 was responded to by Catellus and was subsequently withdrawn by the Trustee. The second objection (17<sup>th</sup> omnibus-partially invalid) filed on February 28, 2011 was responded to by Catellus with details regarding the objected to components of its claim and was subsequently withdrawn. The third objection (20<sup>th</sup> omnibus-duplication) filed on February 28, 2011 was responded to by Catellus with details, but has yet to be resolved.

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Catellus disputes the 39<sup>th</sup> Objection and in further support of its Proof of Claim submits along with this response the Declaration of Gregory Moore, First Vice President of Catellus Development Corporation, the property manager for the Premises leased by Catellus to the Debtor. See Exhibit 1.

As a response, Catellus submits the following:

**Factual Background**

1. Catellus owns the real estate commonly known as 43706 Christy Street, Fremont, California, consisting of approximately 34,000 sq. ft. in which Circuit City operated a retail store (hereinafter the “Premises”). The Premises are part of the Pacific Commons Shopping Center. The Premises were leased to Circuit City Stores West Coast, Inc. (“CC West”) originally by Catellus Development Corporation, as landlord pursuant to a lease dated December 5, 2003 (the “Lease”). The Lease had a remaining term that expired on January 31, 2020. As part of the terms of the Lease, Circuit City Stores, Inc. (“CC Inc.”) and Catellus entered into a certain Guaranty of Lease (“Guaranty”) by which CC Inc. guaranteed the obligations of CC West to Catellus under the Lease. The Claimant herein, Catellus Operating Limited Partnership, a Delaware limited partnership, is the successor-in-interest to Catellus Development Corporation, a Delaware corporation, the original landlord under the Lease.

2. Proof of Claim No. 7933 is based on the CC Inc. Guaranty. Pursuant to the Lease Rejection Procedures Order entered in this case on December 11, 2008, the Lease was rejected as of December 31, 2008. CC West was current with its post-petition obligations to Catellus through December 31, 2008. Based on the rejection of the Lease as of December 31, 2008, Catellus calculated its total future rent damages arising out of the rejection for the remaining term of the Lease from January 1, 2009 through January 31, 2020 as \$13,312,995.75. These

gross rejection damages, prior to the application of the landlord's cap under Bankruptcy Code Section 502(b)(6), are set out in **Exhibit 2** attached hereto.

**Mitigation Efforts**

3. Immediately after the rejection of the Lease, Catellus engaged the commercial real estate brokerage firm of Cornish & Carey as its listing agent to arrange for the marketing of the Circuit City space and finding a new tenant for the Premises. The Premises occupied by CC West under the Lease are a portion of a shopping center commonly known as Pacific Commons Shopping Center. The vacancy of the Premises by Circuit City triggered certain co-tenancy failures with two other tenants of the Pacific Commons Shopping Center, Old Navy and Office Depot, resulting in reduced penalty rent for Catellus and in the case of Old Navy, an ongoing termination right until the co-tenancy failure was cured. Thus, given the size of the Premises occupied by CC West and the co-tenancy financial impacts, there was a great sense of urgency by Catellus to obtain a suitable occupant for the space.

4. Cornish & Carey, utilized all of the typical means of marketing a commercial retail location such as brochures, mass e-mail circulations to prospective tenants, presentations at ICSC meetings and the like. Through these efforts, Catellus was able to enter into the lease of the Premises with Nordstrom Rack in September of 2010. The pertinent details of the Nordstrom Rack lease are as follows:

Lease effective date	September 15, 2010
Lease term and rent commencement date	Ten (10) years commencing on March 24, 2011
Expiration date	March 31, 2021
Base rent	First five (5) years at \$47,981 per month and remaining five (5) years at \$52,779 per month

Tenant improvements	\$1,659,563 (includes approximately \$35,000 in landlord make-ready costs)
Real estate commission	\$304,821

5. Based on the base rent and other charges to be recovered by Catellus under the Nordstrom Rack lease, the amount of revenues that will be collected by Catellus from March 24, 2011 through the end of the CC West Lease term of January 31, 2020 is \$8,201,967.06. A spreadsheet showing the gross revenue from the Nordstrom Rack lease is attached to the Declaration of Gregory Moore. *See* Exhibit 1, Exhibit A.

6. After deducting the cost of re-letting the Premises, which included tenant improvement allowances and the real estate commissions for re-letting the Premises, the net mitigation of damages by Catellus through the Nordstrom Rack lease is \$6,237,583.06.

7. After applying the net mitigation amount to the gross rejection damages as set forth in the Catellus Proof of Claim, the net rejection damages after mitigation are \$7,075,412.69. This sum remains in excess of the landlord's cap under Bankruptcy Code Section 502(b)(6)(A) that is applicable to this Proof of Claim, which totals \$1,903,434.65.

8. Thus, despite Catellus' reasonable efforts to mitigate its damages and to obtain a substitute tenant as promptly as possible, market conditions did not allow Catellus to mitigate its damages below the landlord's cap for its Guaranty claim and as a result, the claim asserted by Catellus for the Guaranty is not subject to any reduction despite the reasonable mitigation efforts of Catellus.

WHEREFORE, Catellus requests that the Court deny the Liquidating Trustee's 39<sup>th</sup> Objection to Catellus' Proof of Claim No. 7933 and allow that claim in the amended amount of \$1,915,734.65 as set forth in Catellus' prior response to the Liquidating Trustee's Twentieth Omnibus Objection (docket item no. 10266) previously filed herein.

Dated: June 20, 2012

**CHRISTIAN & BARTON, LLP**

/s/ Jennifer M. McLemore

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***Counsel for Catellus Operating Limited Partnership***

**CERTIFICATE OF SERVICE**

I, Jennifer M. McLemore, hereby certify that on the 20<sup>th</sup> day of June 2012, a true and correct copy of the foregoing Response of Catellus Operating Limited Partnership to Liquidating Trustee's Thirty-Ninth Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No. 7933) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter and emailed separately to the following:

Jeffrey N. Pomerantz, Esquire  
Andrew W. Caine, Esquire  
Lynn L. Tavenner, Esquire  
Paula S. Beran, Esquire

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/s/ Jennifer M. McLemore  
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Jennifer M. McLemore